

**REMARKS**

Prior to this Amendment, Claims 1-13 were pending in the present application. It is gratefully acknowledged that the Examiner found allowable subject matter in Claims 2-3 and 9.

The Examiner objected to Claims 3, 5, 8 and 10 for informalities. The Examiner rejected Claims 1, 4-8 and 10-13 under 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2004/0013102 to Fong et al. (hereinafter *Fong*).

Please amend Claims 1, 3, 5, 8 and 10, please add new Claims 14-21, and cancel Claim 13, as shown. No new matter has been added. Accordingly, Claims 1-12 and 14-21 will be pending upon entry of this Amendment.

Regarding the objection, it was alleged that Claims 3, 5, 8 and 10 do not define each of the terms therein. In response, Applicants have amended Claims 3, 5 and 8 to include the definitions for the terms indicated by the Examiner, as well as Claim 1 for antecedent basis purposes and Claim 12 to correct a typographical error, as shown herein. Accordingly, withdrawal of the objection is respectfully requested.

Regarding the rejection of Claims 1, 4-8 and 10-13 under 35 U.S.C. §102(e), the Examiner alleged that *Fong* teaches each and every element recited in these rejected claims, either expressly or impliedly. Applicants respectfully disagree.

Claim 1 recites, inter alia, a base station determining timing of a channel quality information request. In paragraph [0053] cited by the Examiner, *Fong* teaches that following the reception and attempted decoding of the subpackets transmitted on the F-PDCH, the MS supplies to the BS via the R-CQICH feedback information about the received signal quality (CQI) for the forward packet data channel. This information can be used by the BS to control transmission

power to the MS, determine data rate (encoder packet size and transmission duration), trigger packet data channel handoff, determine scheduling for the packet data channel, etc.

However, *Fong* fails to expressly or impliedly teach a base station determining timing of a CQI request, as claimed, because the BS only receives feedback information about the CQI, not timing of the CQI request. Although the BS in *Fong* may use the feedback information to determine a data rate and scheduling for the packet data, nowhere does *Fong* teach that the BS determines timing of the CQI request, either expressly or impliedly.

In addition, although *Fong* teaches in paragraph [0049] that the MQS2 (or QoS sublayer 2) provides an automatic retransmission (ARQ) protocol that ensures the delivery of encoder packets from a BS to a MS by retransmitting portions of the turbo-coded encoder packets based on feedback from the MS on the R-ACKCH to indicate successful (ACK) or unsuccessful (NAK) reception and decoding of the encoder packet, it is respectfully asserted that *Fong* does not teach requesting an automatic repeat request acknowledgement (ARQ-ACK) message of downlink data upon requesting the CQI from a subscriber station, as claimed.

Furthermore, it is unclear how from the ARQ-ACK cited by the Examiner, a modulation and coding level of downlink data is determined by extracting the channel quality report information from the ARQ-ACK, in contrast with Claim 1. Applicants respectfully assert that *Fong* fails to teach this “determining” recitation in Claim 1.

Similar recitations are found in independent Claim 8. For at least these reasons, it is respectfully submitted that the §102(e) rejection is incorrect, and withdrawal thereof is respectfully requested.

It is respectfully asserted that new Claims 14-21 are distinguishable over the cited art for at least the foregoing reasons, as well.

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Accordingly, all of the claims pending in the Application, namely, Claims 1-12 and 14-21, are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants' attorney at the number given below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul J. Farrell", written in a cursive style.

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